



license, is a two-year bill pending in the Senate Business and Professions Committee. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 58 for background information on this issue.)

RECENT MEETINGS:

At BLA's June 2 meeting, Larry Chimbole was introduced as the newest public member of the Board. Mr. Chimbole is a former mayor of Palmdale, a former hardware businessman, and an expeditor for developers.

Proposed language to amend section 2620 of Chapter 26, Title 16 of the CCR, was discussed at both the June 2 and September 8 meetings. The Board is attempting to clarify the education and job experience requirements for licensing applicants. The issue was referred back to the Education Committee for further study.

Executive Officer Jeanne Brode reported on BLA's licensing exam figures at the September 8 meeting. Three hundred fifty-five candidates took the exam this year, of whom 257 were retake candidates. Exam reviews were scheduled for mid-October to mid-November, since results were not available until approximately October 1.

FUTURE MEETINGS:

To be announced.

BOARD OF MEDICAL QUALITY ASSURANCE

Executive Director: Ken Wagstaff
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BMQA is an administrative agency within the state Department of Consumer Affairs. The Board, which consists of twelve physicians and seven lay persons appointed to four-year terms, is divided into three autonomous divisions: Allied Health, Licensing and Medical Quality.

The purpose of BMQA and its three divisions is to protect the consumer from incompetent, grossly negligent, unlicensed or unethical practitioners; to enforce provisions of the Medical Practice Act (California Business and Professions Code sections 2000 *et seq.*); and to educate healing arts licensees and the public on health quality issues.

The functions of the individual divisions are as follows:

The Division of Allied Health Professions (DAHP) directly regulates five non-physician health occupations and oversees the activities of seven other examining committees which license non-

physician certificate holders under the jurisdiction of the Board. The following allied health professionals are subject to the jurisdiction of the Division of Allied Health: acupuncturists, audiologists, drugless practitioners, hearing aid dispensers, lay midwives, medical assistants, physical therapists, physical therapist assistants, physician's assistants, podiatrists, psychologists, psychological assistants, registered dispensing opticians, research psychoanalysts and speech pathologists.

The Division of Medical Quality (DMQ) reviews the quality of medical practice carried out by physicians and surgeons. This responsibility includes enforcing the disciplinary and criminal provisions of the Medical Practice Act. The division operates in conjunction with fourteen Medical Quality Review Committees (MQRC) established on a geographic basis throughout the state. Committee members are physicians, allied health professionals and lay persons appointed to investigate matters assigned by the Division of Medical Quality, hear disciplinary charges against physicians and receive input from consumers and health care providers in the community.

Responsibilities of the Division of Licensing (DOL) include issuing licenses and certificates under the Board's jurisdiction, administering the Board's continuing medical education program, suspending, revoking or limiting licenses upon order of the Division of Medical Quality, approving undergraduate and graduate medical education programs for physicians, and developing and administering physician and surgeon examinations.

BMQA's three divisions meet together approximately four times per year, in Los Angeles, San Diego, San Francisco and Sacramento. Individual divisions and subcommittees also hold additional separate meetings as the need arises.

On June 27, Governor Deukmejian reappointed Dr. Madison F. Richardson, Dr. John P. Kassabian, and Dr. John C. Lungren to the Board. Dr. Richardson, 45, is the chief of the Division of Head and Neck Surgery at a Los Angeles medical center. Dr. Kassabian, 52, is the president of a Pasadena medical corporation. Dr. Lungren, 73, is a retired practitioner.

MAJOR PROJECTS:

BMQA/DCA Relations Improve. At BMQA's September 15 meeting, Board President Dr. Galal Gough opened the full Board meeting with an update on the improved relations between the Department of Consumer Affairs (DCA)

and BMQA. Earlier this year, BMQA's physician discipline system was criticized in reports released by the Legislative Analyst, the Little Hoover Commission, and the Center for Public Interest Law (CPIL). Board members were upset by what they perceived as a lack of support from DCA; in particular, BMQA was concerned about a letter sent by DCA Director Michael Kelley to Senator Larry Stirling expressing a lack of confidence in BMQA. (See CRLR Vol. 9, No. 3 (Summer 1989) pp. 54-55 for background information.)

The Board's Executive Committee held a meeting in July with Director Kelley and Shirley Chilton, Secretary of the State and Consumer Services Agency. Dr. Gough reported that several benefits resulted from this meeting: (1) 28 additional staff positions for enforcement were approved in a successful budget augmentation; (2) DCA Director Kelley decided to take a neutral position regarding the BMQA name change issue (see *infra* LEGISLATION for discussion of AB 184); (3) to halt the defection of BMQA investigators to other agencies, DCA and BMQA agreed to work together with other related agencies on a plan to increase pay for BMQA investigators commensurate with the private sector; and (4) DCA agreed to collaborate more closely with BMQA on correspondence sent to legislators. In summary, Dr. Gough noted that BMQA and DCA are "working together" and "standing united" to accomplish their goals.

Dr. Gough also reported that BMQA has had favorable response to an open letter in the July issue of *Action Report*, defending BMQA against CPIL's report criticizing its disciplinary procedures. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 1 for a condensed version of CPIL's report.) *Action Report* is a newsletter published quarterly by DCA which reports on BMQA meetings and disciplinary actions, and is sent to physicians statewide.

Public Hearings on Physician Discipline System Cancelled. Due to an alleged lack of expressed public interest, the hearings scheduled to discuss BMQA's physician discipline system were cancelled by Executive Director Ken Wagstaff. The hearings were originally initiated by former state Senator and current BMQA member Alfred H. Song to allow an "indignant public" an opportunity to air its grievances about the Board's disciplinary procedures. (See CRLR Vol. 9, No. 3 (Summer 1989) pp. 54-56 for background information.) However, prior to BMQA's ultimate abandonment of the



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hearings, the format was revised and the hearings were to be informational meetings with predetermined content and agenda. BMQA has issued no statement concerning any possibility of rescheduling the hearings.

BMQA Budget Update. At the full Board's September meeting, Executive Director Wagstaff and Assistant Executive Director Tom Heerhartz presented a report on the supplemental budget act of 1989-90 and a summary of budget requests for 1990-91. Among the budget items discussed was a provision of the act requiring BMQA to use an appropriated \$100,000 to educate physicians in rural "medically deficient areas" or small practices on Medi-Cal billing and reimbursement procedures. This appropriation is based on the theory that educating physicians on the Medi-Cal system will lead to treatment of more Medi-Cal patients. A memo from Heerhartz suggests that since the Board already publishes *Action Report*, the cost of adding Medi-Cal educational information to the *Report* would be nominal. Fiscal intermediaries would field physician inquiries generated by the *Action Report* information and would conduct training sessions, if necessary; intermediaries would then be reimbursed from the \$100,000 fund. In addition, the term "medically deficient area" would be expanded to include metropolitan areas as well.

This budget item sparked a discussion of the merits of the Medi-Cal system in general. Board members stated that the problem is not that physicians do not know how to use the Medi-Cal system, but that Medi-Cal simply does not adequately reimburse physicians for services rendered, and that "doctors won't treat Medi-Cal patients for free." Several members suggested that the money would be better spent by resurrecting a loan program which assists doctors who start a practice in a "medically deficient area."

Under the supplemental budget act, BMQA is required to submit quarterly reports to the chair of the Joint Legislative Budget Committee and the chairs of the fiscal committees of the legislature. Additionally, BMQA was required to submit a report to the legislature no later than November 15, 1989 analyzing the available options for its intake and handling of consumer complaints. This report must include a plan to provide continuing training to BMQA's consumer services representatives, and a plan to enhance its case tracking and investigation system, so as to identify patterns in physician conduct.

Wagstaff and Heerhartz were particularly excited about a budget change proposal that may permit them to purchase and install automated verification equipment. The institutional requestor and anyone else who knows a physician's license number could simply punch the number into the phone for an automated response regarding the validity of the license.

Response to the Little Hoover Commission Report. At the September 15 DMQ meeting, a special committee reported on recommended responses to a report issued by the Little Hoover Commission concerning the medical care provided to patients in California nursing homes. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 56 and Vol. 9, No. 2 (Spring 1989) pp. 38-39 and 60 for background information.) The Committee agreed with six of the eighteen Little Hoover Commission recommendations. These recommendations include the development of a peer review system in conjunction with the Department of Aging; improved computer tracking of licensing information; and waiver of confidentiality of Medi-Cal patient medical records for investigative purposes. The Committee disagreed with two of Little Hoover's recommendations: one calling for a clear definition of patient neglect, abandonment, and mistreatment, and implementation of substantial penalties for such conduct—on grounds that existing law is adequate; and another recommending the issuance of citations and fines for poor patient care in nursing homes.

According to the Committee, BMQA has no authority to act on ten of the eighteen recommendations, including the establishment of a Department of Aging Ombudsperson Program; development of continuing education requirements for nursing home medical directors; increased use of non-physician medical personnel in nursing homes; development of additional training and continuing education in geriatric medicine; and programs to increase the number of physicians with skills in gerontology and geriatrics.

Prior to the September 15 meeting, the Little Hoover Commission had asked DMQ to postpone its discussion until the December meeting, because of its inability to send a representative to the September meeting. However, DMQ did not remove the Little Hoover Commission report item from its agenda, stating that a Little Hoover Commission representative was present at the June DMQ meeting and could request the Division to include discussion of the issue on its agenda at future meetings.

At its full Board meeting later that day, BMQA approved the responses recommended by the Committee.

Physician Diversion Program. During its September meeting, DMQ also discussed the establishment of a sixth Diversion Evaluation Committee. During 1989, the Physician Diversion Program, which is available to all of the approximately 74,000 state-licensed physicians, had nine successful and three unsuccessful physician participants. The Board requested fiscal impact information before it would approve the creation of a sixth Diversion Evaluation Committee. The Board also suggested that efforts should be undertaken to interact with hospital well-being programs which are mandated by the federal Department of Health and Human Services.

Expansion of Postgraduate Training Requirements. At its September meeting, DOL continued its discussion of draft legislation which would extend the length of postgraduate training (PGT) from a minimum of one year to a mandatory three-year period of residency training. Such an extension would apply to both foreign medical graduates (FMGs) and domestic medical students. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 56; Vol. 9, No. 2 (Spring 1989) pp. 60-61; and Vol. 9, No. 1 (Winter 1989) p. 51 for background information.)

Similar extended PGT requirements have already been widely applied throughout the nation. Currently, 36 states require more than one year of mandatory postgraduate training. DOL's goals in proposing the new PGT requirements are to ensure clinical competence of all applicants regardless of their earlier medical school training, and to avoid the impracticalities of onsite visits and individual evaluations of foreign medical schools which are otherwise required.

On September 14, the Division held an open discussion concerning potential effects of the proposal. Several resident representatives and doctors testified. Alan Brill, representing the California Association of Interns and Residents, reiterated the need to resolve the issue of "moonlighting" (that is, residents who perform medical care during their off-hours to patients outside the hospital training facility to supplement their income). Brill also expressed concern for the communities currently served by moonlighting residents. Such areas are often underserved and depressed neighborhoods whose clinics might not otherwise operate without the residents. Further, Brill stressed the financial needs of medical school graduates who engage



in moonlighting, citing excessive medical school debts and insufficient residency salaries. Brill suggested that the Division strike a compromise which would permit residents to moonlight under the supervision of a teaching facility. In the event the Division were to bar them from moonlighting altogether, the residents would request a provisional license which would permit them to perform some physician duties. Such a license should not restrict them from providing services to underserved areas, however. Brill also demanded that the residents receive an increase in pay and that the Division place a "cap" on the number of years in which a resident must complete his/her PGT.

Further testimony from a recently licensed family practitioner underscored the financial pressure under which many residents labor. He stressed the importance of moonlighting and testified that such a practice benefits the local clinics and enhances the educational training of the residents themselves.

Dr. Tom Nelson, the Assistant Dean of UC Irvine's residency programs, stressed the importance of the proposed legislation. As one who oversees more than 600 residents, Dr. Nelson recognized the problems such an extension in PGT might produce for teaching facilities and hospitals. Dr. Nelson emphasized the need for a provisional license which would enable residents to fill out prescriptions and sign death certificates. In response to the moonlighting question, which he recognized as a very real concern for residents, Dr. Nelson suggested that the medical schools find some way of providing more financial aid for students who are currently under financial pressure. In this way, the need for moonlighting might be significantly reduced.

Former BMQA member Dr. Lindy Kumagai recognized that consumer protection and quality patient care are the primary objectives of any medical training proposal. Accordingly, Dr. Kumagai would not oppose moonlighting so long as it does not interfere with residents' training. A representative of the California Association of Family Practitioners opined that the moonlighting experience might actually benefit residency training in the long run with added practical experience; also, if moonlighting were barred, residents might very well clamor for higher salaries.

At the close of the discussion, Division members proposed a plan under which residency program directors would be asked to approve provisional licensure. Upon a finding that a resident has "suc-

cessfully completed" (as opposed to merely "completed") a minimal level of training, the program director would approve that resident for moonlighting and/or provisional licensure. The Division scheduled a November 30 vote on the draft legislation.

Disapproval Proceedings. At DOL's September 14 meeting, Deputy Attorney General (DAG) Jana Tuton raised the subject of possible disapproval proceedings against the Universidad Autonoma de Ciudad Juarez (UACJ). On August 24, DOL notified UACJ that it was preparing to begin formal disapproval proceedings against the school under sections 2101 and 2102 of the Business and Professions Code. The decision to commence such proceedings was based on DOL's review of applications received from recent UACJ graduates, wherein Division staff discovered what they believe to be deficiencies in the school's basic sciences and clinical training requirements.

In September 1988, the Division sent a letter to the UACJ requesting that officials from the university complete a curriculum survey. Twice in May 1989, the Division requested additional information regarding the curriculum. No response was ever received from the university, which led DOL to conclude that UACJ is unwilling to provide the requested information; thus, the Division initiated formal disapproval proceedings.

During DOL's September meeting, DAG Tuton provided members with a copy of an order to show cause (OSC) why the proceedings should not begin. In an eleventh-hour effort to postpone the disapproval proceedings, UACJ sent a contingent consisting of Ms. Leni Gonzalez, UACJ's international affairs coordinator, and legal counsel Greg Anderson, who was retained only one week prior to the meeting. Anderson apologized on behalf of UACJ and tried to explain the university's failure to reply. While acknowledging DOL's authority to examine the curriculum of the university and determine whether physicians trained under the school's curriculum are eligible for licensure in California, Anderson cited a language barrier problem and postal irregularities in Mexico as excuses for UACJ's delinquency. Anderson concluded by leaving copies of partially-answered surveys in Spanish, and promised that all of the requested information would be presented to the Division within the following six weeks.

In response to UACJ's request that the OSC be postponed, DOL members unanimously agreed to proceed with the

OSC unless or until the Division receives the requested information. The Division was scheduled to reach a final determination on formal disapproval of UACJ at its December 1 meeting.

Proposed Change in FMG Written Exam Requirements. Currently, section 1328, Chapter 13, Title 16 of the California Code of Regulations (CCR), requires foreign medical graduates (FMGs) to obtain certification from the Educational Commission for Foreign Medical Graduates (ECFMG) by passing an English proficiency exam and the ECFMG's Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS), and then to pass Component I of the Federal Licensing Exam (FLEX) before commencing postgraduate training in California. Graduates of U.S. medical schools take Parts I and II of the National Board of Medical Examiners (NBME) exam. There is currently a national effort to implement a single examination pathway to licensure for all applicants; in September, the ECFMG began administering Parts I and II of the NBME as an alternative to the FMGEMS.

In recognition of the fact that Component I of the FLEX and Parts I and II of the NBME are equivalent exams, and in order to allow FMGs to use passing scores on the NBME toward their licensure requirement in California, DOL adopted an amendment to section 1328 at its September meeting. The amendment specifies that DOL's "written examination" requirement may be satisfied by either (1) Components I and II of FLEX, or (2) Parts I and II of the NBME and Component II of FLEX. This proposal also specifies that passing either Component I of FLEX or Parts I and II of the NBME shall qualify an applicant to commence postgraduate training in a hospital in California.

At this writing, the rulemaking package on this regulatory change is being prepared for submission to the Office of Administrative Law.

Questions on Role of DAHP. At its September meeting, DAHP members discussed the examination-selling scandal which has recently plagued its Acupuncture Examining Committee (AEC). (See CRLR Vol. 9, No. 3 (Summer 1989) p. 58 and Vol. 9, No. 2 (Spring 1989) p. 64 for background information.) DAHP members expressed concern about their legal "responsibility" for the conduct of the allied health committees under DAHP's jurisdiction, and about AB 2367 (Filante), which (among other things) requires that AEC's examination be administered by



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independent consultants, with technical advice from the members of AEC. Previous versions of the bill permitted DAHP to review and supervise the examination processes of all boards and committees within its jurisdiction, but those were dropped. DAHP member Alfred Song lamented that DAHP was not consulted regarding these amendments, and opined that the Division's current jurisdiction over the examining committees is "illusory."

Executive Officer Wagstaff assured DAHP that the bill does not affect the Division's administrative role and that it still maintains a policy role in advising on new legislation. DCA legal counsel Greg Gorges noted that the powers of the allied health committees are specifically defined in the Business and Professions Code, whereas DAHP's authority in relation to the committees is not so clearly defined. The Division approved a motion requesting Gorges to define the limits of DAHP's "responsibility" as used in Business and Professions Code section 2006, and to explore the possibility of future legislation that would clearly define its authority over and relationship with the healing arts committees.

LEGISLATION:

AB 1150 (Tucker) expands the settings in which the practice of respiratory care may be practiced under the supervision of a medical director and requires that such care meet specified protocols. Any organization conducting an examination for the Respiratory Care Examining Committee is required to provide the Committee with pass/fail statistics for each approved respiratory care training program. This bill was signed by the Governor on September 21 (Chapter 645, Statutes of 1989).

AB 2307 (Calderon). Section 2555 of the Business and Professions Code authorizes DAHP to suspend or revoke the certificate of registration of any dispensing optician for violating the chapter regulating dispensing opticians. This bill, sponsored by BMQA, would also authorize DAHP to impose conditions of probation as a form of discipline regarding violations of provisions that (1) regulate prescription lenses; (2) regulate forms of public communications and specified advertisements; and (3) prohibit specified arrangements between dispensing opticians and other specified licensees. This bill was signed by the Governor on September 13 (Chapter 433, Statutes of 1989).

AB 402 (Roybal-Allard) exempts from

licensure health care practitioners who are licensed in another state and who provide health care for which they are licensed during a state of emergency. This bill was signed by the Governor on July 7 (Chapter 97, Statutes of 1989).

AB 2219 (Tucker) which makes technical, nonsubstantive changes in provisions of existing law which specify the curriculum requirements for licensure as a physician, was signed by the Governor on September 19 (Chapter 506, Statutes of 1989).

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 3 (Summer 1989) at pages 56-57:

SB 1330 (Presley), as amended August 30, increases the statutory ceiling on BMQA initial licensing fees and biennial renewal fees from the current \$325 level to \$400, and increases the initial licensing fees and biennial renewal fees for podiatrists from the current \$525 level to \$800. This bill was signed by the Governor on September 25 (Chapter 801, Statutes of 1989).

AB 184 (Speier), as amended August 31, changes the name of BMQA to the "Medical Board of California." This bill was signed by the Governor on September 26 (Chapter 886, Statutes of 1989).

SB 711 (Greene), which would have required BMQA to consider specified factors in exercising its authority to discipline a physician for performing repeated acts of clearly excessive prescribing, furnishing, or administering of drugs or treatment, was vetoed by the Governor on September 21.

AB 1729 (Chandler), as amended August 22, makes it a misdemeanor for any person who subverts or attempts to subvert any examination. This bill was signed by the Governor on September 29 (Chapter 1022, Statutes of 1989).

SB 1480 (Keene), as amended August 28, amends section 800 of the Business and Professions Code to declare that the identity of whistleblowers who report physician misbehavior would remain confidential. This bill was signed by the Governor on September 11 (Chapter 354, Statutes of 1989).

AB 675 (Speier), as amended August 31, would have added the act of charging excessive fees as grounds for disciplinary action against physicians. This bill was vetoed by the Governor on September 25.

AB 2122 (Allen), which, among other things, redefines the term "peer review body" and requires reporting of a licensee's leave of absence following a notice of impending investigation, was signed by the Governor on September 30 (Chapter 1070, Statutes of 1989).

SB 1211 (Keene), as amended July 20, declares the need for California to opt out of specified provisions of federal law regarding peer review of physicians, and provides that a licensee who is the subject of a final proposed action of a peer review body shall be entitled to various due process rights. This bill was signed by the Governor on September 8 (Chapter 336, Statutes of 1989).

SB 37 (Doolittle), as amended September 13, requires physicians to inform surgery patients, by means of a standardized written summary prepared by the Department of Health Services (DHS), whenever there is a possibility of a blood transfusion during their surgery, of the positive and negative aspects of receiving certain kinds of blood, as specified. This bill requires BMQA to publish DHS' standardized written summary and distribute copies thereof, upon request, to physicians for a fee not to exceed specified costs. This bill was signed by the Governor on October 2 (Chapter 1365, Statutes of 1989).

SB 1434 (Presley), as amended September 15, would enhance DMQ's ability to detect incompetent and/or impaired physicians by requiring improved reporting of malpractice judgments and settlements by insurance companies and courts, adverse peer review actions by hospitals, felony charges against physicians by district attorneys, and physician negligence detected by coroners conducting autopsies. This bill is a two-year bill pending in the Senate Committee on Appropriations.

AB 1565 (Sher) would make the section 805 reporting requirement applicable to a medical or professional staff of a designated postsurgical recovery care demonstration project. This bill is a two-year bill pending in the Assembly Committee on Judiciary.

SB 1162 (Stirling), regarding the use by a physician of conscious sedation, regional anesthesia, or general anesthesia outside the auspices of a peer review body, is a two-year bill pending in the Senate Committee on Business and Professions.

LITIGATION:

On July 13 in *Le Bup Thi Dao v. Board of Medical Quality Assurance*, the action challenging DOL's two-year moratorium on licensing post-1975 Vietnamese medical graduates brought by the Center for Public Interest Law (CPIL), the California Supreme Court granted the petitions for review filed by CPIL and BMQA. The Court reversed the First District Court of Appeal's



denials of both petitions and ordered the First District to hear both issues. BMQA appeals the trial court's ruling that state agencies are subject to suit under section 1981 of the federal civil rights laws; CPIL appeals the trial court's finding that the individual defendants (DOL members and staff) are immune from damages. Briefing in the First District concluded in late September; oral argument has yet to be scheduled. (See CRLR Vol. 9, No. 3 (Summer 1989) pp. 57-58 and Vol. 7, No. 4 (Fall 1987) pp. 53-54 for background information on this case.)

In *BMQA v. Andrews*, No. H003366 (June 29, 1989), the Sixth District Court of Appeal affirmed a permanent injunction granted to BMQA and preventing appellants from engaging in the unlawful practice of medicine without a license, including advising patients to fast to cure ailments. In upholding the injunction, the court rejected appellants' argument that the order violated appellants' constitutional rights to privacy and to practice religion.

In *Pinhas v. Summit Health, Ltd., et al.*, No. 87-6530 (July 26, 1989), the U.S. Ninth Circuit Court of Appeals—following the U.S. Supreme Court's 1988 decision in *Patrick v. Burget* (see CRLR Vol. 8, No. 3 (Summer 1988) pp. 64-65 for background information)—reversed the lower court's dismissal of a physician's antitrust action against a hospital and its peer review committee. Although the lower court found the hospital immune from liability under the "state action" defense to antitrust claims, the Ninth Circuit ruled that the hospital failed to make a sufficient showing on one of the two tests required for "state action" immunity—that is, that the state "actively supervises" the peer review process. The Ninth Circuit held that neither BMQA, the state Department of Health Services, nor the state judiciary actively supervises the wholly private functioning of peer review committees to strip physicians of hospital privileges, and reinstated the physician's treble-damages antitrust claim against the hospital.

RECENT MEETINGS:

At DOL's September meeting, the Division discussed the acceptance of the Canadian written licensing examination, the LMCC, towards California licensure. Absent more detailed information, DOL members were unable to determine whether the exam is equivalent to those required in California. Dr. Gough will contact the Canadian Consulate to examine whether the exam is comparable.

At DAHP's September meeting, the Division decided to hold a December 1 regulatory hearing on proposed changes to the regulations of the Physician's Assistant Examining Committee (regarding PA scope of practice) and the implementation of SB 645 (Chapter 666, Statutes of 1988), which allows DAHP to adopt regulations establishing standards for technical supportive tasks and services which may be performed by medical assistants.

FUTURE MEETINGS:

February 1-2 in San Francisco.

April 19-20 in Los Angeles.

June 7-8 in Sacramento.

ACUPUNCTURE EXAMINING COMMITTEE

Interim Executive Officer: Lynn Morris
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The Acupuncture Examining Committee (AEC) was created in July 1982 by the legislature as an autonomous rule-making body. It had previously been an advisory committee to the Division of Allied Health Professions of the Board of Medical Quality Assurance.

The Committee prepares and administers the licensing exam, sets standards for acupuncture schools, and handles complaints against schools and practitioners. The Committee consists of four public members and seven acupuncturists, five of whom must have at least ten years of acupuncture experience. The others must have two years of acupuncture experience and a physicians and surgeons certificate.

MAJOR PROJECTS:

Exam Scandal Aftermath. In response to the scandal which has plagued the Committee since the arrest of former AEC member Dr. Chae Woo Lew for allegedly selling AEC's licensing exam for bribes totaling approximately \$800,000, and under increased scrutiny by both the legislature and the Department of Consumer Affairs, AEC is continuing to implement several policies and procedures designed to prevent any recurrence of exam security problems. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 58 and Vol. 9, No. 2 (Spring 1989) p. 64 for background information.)

Former AEC Executive Officer Jonathan Diamond has reportedly been transferred within the state system, and Lynn Morris has been selected as the Committee's new Interim Executive Officer.

Morris has worked with various regulatory boards within the Department of Consumer Affairs, and is a former Executive Officer of the state Board of Architectural Examiners.

On August 8, AEC announced that it had filed accusations against 18 individuals for alleged bribery and other "substantially related criminal offenses." Furthermore, BMQA investigators have been assigned to AEC and are pursuing other allegations of improper licensing.

Former AEC public member Joel Edelman recently declined reappointment to the Committee in protest of the scandal, after calling for a state Attorney General's investigation into AEC's past practices.

Regulatory Changes Approved. On August 16, the Office of Administrative Law (OAL) approved AEC's amendment to sections 1399.425(c), 1399.426(d), 1399.426(f), and 1399.426(g), Chapter 13.7, Title 16 of the California Code of Regulations (CCR), regarding acupuncturist education and training. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 58 and Vol. 9, No. 1 (Winter 1989) p. 53 for background information.)

On September 8, OAL approved AEC's adoption of new sections 1399.462 and 1399.480-485, and its amendment of existing sections 1399.450-451 and 1399.480, Title 16 of the CCR, regarding acupuncturist continuing education standards. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 58; Vol. 8, No. 3 (Summer 1988) p. 65; and Vol. 8, No. 2 (Spring 1988) p. 64 for a complete description of these regulatory changes.)

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 58:

AB 2367 (Filante), as amended September 6, is the legislature's initial response to the exam-selling scandal. Effective January 1, 1990, this bill changes the name of the AEC to the "Acupuncture Committee." The bill further specifies that the five acupuncturist members of the Committee shall be appointed by the Governor, that all gubernatorial appointees shall be subject to confirmation by the Senate, and that they shall represent a cross-section of the cultural backgrounds of the licensed members of the acupuncturist profession. AB 2367 provides that members of the Committee may be removed by their appointing power. Additionally, this bill provides that on and after July 1, 1990, and until January 1, 1995, the examination of applicants for a license to practice acupunc-



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ture shall be administered by independent consultants, with technical assistance and advice from members of the Committee. Finally, \$279,000 from the Acupuncture Fund will be appropriated to the Committee for the purpose of funding its activities during the period January 1, 1990, to June 30, 1990. This bill was signed by the Governor on October 1 (Chapter 1249, Statutes of 1989).

SB 654 (Torres), as amended on August 21, would appropriate \$279,000 from the Acupuncture Fund to AEC to augment the Budget Act of 1989. The bill, which would take effect immediately as an urgency statute, is a two-year measure pending in the Senate Committee on Budget and Fiscal Review.

SB 633 (Rosenthal), which would require AEC to prepare and administer the licensure examination twice per year at six-month intervals, is a two-year bill pending in the Assembly Health Committee.

FUTURE MEETINGS:

December 9 in Los Angeles.

HEARING AID DISPENSERS EXAMINING COMMITTEE

Executive Officer: Margaret J. McNally
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The Board of Medical Quality Assurance's Hearing Aid Dispensers Examining Committee (HADEC) prepares, approves, conducts, and grades examinations of applicants for a hearing aid dispenser's license. The Committee also reviews qualifications of exam applicants. Pursuant to SB 2250 (Rosenthal) (Chapter 1162, Statutes of 1988), the Committee is authorized to issue licenses and adopt regulations pursuant to, and hear and prosecute cases involving violations of, the law relating to hearing aid dispensing. HADEC has the authority to issue citations and fines to licensees who have engaged in misconduct.

The Committee consists of seven members, including four public members. One public member must be a licensed physician and surgeon specializing in treatment of disorders of the ear and certified by the American Board of Otolaryngology. Another public member must be a licensed audiologist. The other three members are licensed hearing aid dispensers.

MAJOR PROJECTS:

Assistive Listening Devices. The debate on whether assistive listening devices (ALDs) fit within the statutory definition

of a hearing aid continues. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 53 and Vol. 8, No. 4 (Fall 1988) p. 62 for background information.) At HADEC's June 14 meeting, Committee member Knox Brooks presented proposed definitions of the two terms, and a suggested set of criteria for determining whether a given device is a hearing aid or ALD.

Under section 3305 of the Business and Professions Code, a hearing aid is a fitted acoustical instrument or device that has been physically and/or electrically designed, built, or modified for, or represented as, aiding or improving hearing through daily use by a hearing-impaired person, and any parts, attachments, or accessories of such instrument. ALDs are products designed to solve specific listening problems through temporary use, and are not primarily for full-time use. An ALD modified or converted for full-time use is a hearing aid. ALDs include but are not limited to telephone listening devices, alert/alarm systems, and group or wide-area listening systems. The recommended tests to differentiate between the two include the following: whether the device is specifically fitted to a unique hearing loss; whether it can be used by more than one person; whether it is for one or a few special listening situations; whether it is surgically implanted or otherwise applied through medical intervention; and whether it requires an ear impression or other special fitting procedure.

Department of Consumer Affairs (DCA) legal counsel Greg Gorges recommended that HADEC disseminate the two definitions and hold a public hearing to obtain more input on the issue.

At HADEC's August 26 meeting, the Continuing Education Subcommittee recommended that the Committee propose regulatory changes to clarify the hearing aid/ALD distinction. The Committee was scheduled to take up this matter again at its November meeting.

Medical Assistant Regulations. HADEC has taken an active role in reviewing the implementation of SB 645 (Royce) (Chapter 666, Statutes of 1988), which directed BMQA's Division of Allied Health Professions (DAHP) to adopt regulations defining the scope of practice of medical assistants. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 61 for background information.) HADEC is particularly interested in ensuring that hearing aid screening and testing is not included within the scope of medical assistants not specifically trained in that area.

Consumer Pamphlet. HADEC's work

on a consumer education pamphlet continues. A revised version was scheduled for review at HADEC's November meeting.

LEGISLATION:

The following is a status update of bills described in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 59:

SB 1324 (Rosenthal) was signed by the Governor on September 6 (Chapter 302, Statutes of 1989). This bill authorizes the issuance of a temporary license to a hearing aid dispenser applicant licensed in another state who has been engaged in the fitting and sale of hearing aids for two years prior to application, provided that the out-of-state license has not been subject to formal disciplinary action by another licensing authority.

This bill prohibits temporary licensees from being the sole proprietor, manager, or independent operator of a hearing aid business or from advertising or representing themselves as licensed hearing aid dispensers. The temporary license may be issued for six months and may be renewed, but the temporary licensee is required to take the license examination within ten months after the temporary license is issued. Failure to take the examination will result in expiration of the temporary license.

AB 459 (Frizzelle), which would provide that a previously licensed individual may renew his/her license at any time after license expiration upon payment of the applicable fees and satisfaction of continuing education requirements, is a two-year bill pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

RECENT MEETINGS:

At the Committee's June meeting, in response to an earlier request from Self-Help for the Hard of Hearing (SHHH) that HADEC provide ALDs to assist hearing-impaired persons who attend its meetings, DCA legal counsel Greg Gorges opined that HADEC is not legally required to provide ALDs. However, the Committee agreed to voluntarily provide a portable system to meet the needs of the hearing-impaired who attend HADEC meetings.

At HADEC's August 26 meeting, the Examination Subcommittee reported that, after the October examination, the HADEC exam calendar will switch back to June and December administrations.

FUTURE MEETINGS:

January 26-27 in Burbank.
March 30-31 in Sacramento.
June 29-30 in Redding.
September 14-15 in Sacramento.



PHYSICAL THERAPY EXAMINING COMMITTEE

Executive Officer: Steven Hartzell
(916) 920-6373

The Physical Therapy Examining Committee (PTEC) is a six-member board responsible for examining, licensing, and disciplining approximately 10,500 physical therapists. The Committee is comprised of three public and three physical therapist members.

Committee licensees presently fall into one of three categories: physical therapists (PTs), physical therapy aides (PTAs), and physical therapists certified to practice electromyography or the more rigorous clinical electroneuromyography.

The Committee also approves physical therapy schools. An exam applicant must have graduated from a Committee-approved school before being permitted to take the licensing exam. There is at least one school in each of the 50 states and Puerto Rico whose graduates are permitted to apply for licensure in California.

MAJOR PROJECTS:

Impaired PT Program. PTEC is continuing its effort to establish a diversion program to help PTs impaired by abuse of drugs or alcohol. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 56 and Vol. 9, No. 2 (Spring 1989) p. 65 for background information.) On June 5, Committee Chair James Sibbet addressed a letter to BMQA Diversion Program Manager Chet Pelton, requesting a meeting with BMQA officials regarding the possibility of impaired PTs and PTAs participating in BMQA's diversion program for physicians. At the Committee's October 5 meeting, Department of Consumer Affairs legal counsel Greg Gorges announced that he has prepared legislative language to establish a PTEC diversion program, in the event BMQA denies the request. Similar proposals have been previously made by the Board of Podiatric Medicine and the Physician's Assistant Examining Committee; BMQA refused both requests.

LEGISLATION:

The following is a status update of bills described in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 60:

AB 2514 (Roos) provides, among other things, that the examination and reexamination fees for PTs and PTAs shall be the actual cost to the Committee of purchasing, administering, and grading the examination. This bill was signed by the Governor on September 29 (Chapter 1030, Statutes of 1989).

AB 459 (Frizzelle), which would provide that a previously licensed individual may renew his/her license at any time after license expiration upon payment of the applicable fees and satisfaction of continuing education requirements, is a two-year bill pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

LITIGATION:

In *California Chapter of the American Physical Therapy Ass'n et al., v. California State Board of Chiropractic Examiners, et al.*, Nos. 35-44-85 and 35-24-14 (Sacramento Superior Court), petitioners and intervenors (including BMQA and PTEC) challenge the Board's adoption and the Office of Administrative Law's (OAL) approval of section 302 of the Board's rules, which defines the scope of chiropractic practice. In January 1989, the court preliminarily invalidated provisions of section 302 permitting chiropractors to perform colonics and enemas, pre- and post-natal obstetric care, physical therapy, ultrasound, thermography, and soft tissue manipulation. However, the court recently granted in part the Board's motion for reconsideration of the previous ruling, and preliminarily reinstated the provisions allowing chiropractors to perform physical therapy, ultrasound, thermography, and soft tissue manipulation. In light of this ruling, petitioner California Medical Association has indicated its intent to file an amended complaint which will substantially narrow the issues in the case; that filing was expected by mid-November. A status conference is scheduled for January 5, 1990. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 60; Vol. 9, No. 2 (Spring 1989) p. 65; Vol. 9, No. 1 (Winter 1989) p. 54 for background information on this case.)

RECENT MEETINGS:

At PTEC's July 7 meeting, newly-appointed Executive Officer Steve Hartzell was officially introduced. Chair James Sibbet suggested that because the Committee's Executive Officer is not a PT licensee, the Committee may need a PT consultant, especially on enforcement matters.

Committee member Carl Anderson, PT, discussed the proposal of the Division of Industrial Accidents for a revised workers' compensation medical fee schedule. This new fee schedule creates a coding system for PT services provided by PTs, separate from the coding system for physical therapy provided by other licensed practitioners. The Committee

believes this change would provide increased consumer protection by identifying the individual providing the physical therapy.

FUTURE MEETINGS:

December 5 in San Francisco.
February 23 in Los Angeles.
April 27 in Sacramento.
June 22 in Monterey.

PHYSICIAN'S ASSISTANT EXAMINING COMMITTEE

Executive Officer: Ray Dale
(916) 924-2626

The legislature established the Physician's Assistant Examining Committee (PAEC) to "establish a framework for development of a new category of health manpower—the physician assistant." Citing public concern over the continuing shortage of primary health care providers and the "geographic maldistribution of health care service," the legislature created the PA license category to "encourage the more effective utilization of the skills of physicians by enabling physicians to delegate health care tasks...."

PAEC certifies individuals as PAs, allowing them to perform certain medical procedures under the physician's supervision, such as drawing blood, giving injections, ordering routine diagnostic tests, performing pelvic examinations and assisting in surgery. PAEC's objective is to ensure the public that the incidents and impact of "unqualified, incompetent, fraudulent, negligent and deceptive licensees of the Committee or others who hold themselves out as PAs [are] reduced."

PAEC's nine members include one member of the Board of Medical Quality Assurance (BMQA), a physician representative of a California medical school, an educator participating in an approved program for the training of PAs, one physician who is an approved supervising physician of PAs and who is not a member of any Division of BMQA, three PAs and two public members.

On August 29, Assembly Speaker Willie L. Brown Jr. appointed Ruth Ann Kahlert of Moreno Valley as PAEC's new public member. Kahlert is a planning commissioner for Moreno Valley and is part owner of Sunrock Oil Company, a family business in Huntington Beach. Her term expires on January 1, 1993.



REGULATORY AGENCY ACTION

MAJOR PROJECTS:

Scope of Practice Regulations. At its September meeting, BMQA's Division of Allied Health Professions (DAHP) approved the language of proposed regulatory amendments drafted by PAEC in response to Attorney General's Opinion 88-303. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 60; Vol. 9, No. 2 (Spring 1989) p. 65; and Vol. 9, No. 1 (Winter 1989) pp. 55-56 for background information.) DAHP is scheduled to hold a public regulatory hearing on the proposed changes at its December 1 meeting in San Diego.

PAEC and DAHP propose to amend section 1399.541, Chapter 13.8, Title 16 of the California Code of Regulations (CCR), to provide that the practice of medicine by a PA is dependent on the delegation from a supervising physician; specify that the type and limits of the medical tasks delegated to a PA are determined by the supervising physician from that physician's specialty, or usual and customary scope of practice; authorize a PA to provide certain services in emergency life-threatening situations; clarify a PA's practice in a nonambulatory setting; and authorize a PA to perform certain surgical procedures under local anesthesia if the procedure is consistent with the supervising physician's specialty and the PA's training. Sections 1399.543 and 1399.545 will also be amended in minor ways.

Other Regulatory Changes Approved. On August 24, the Office of Administrative Law (OAL) approved PAEC's amendments to section 1399.541(f), which specify that a PA's duties may include those services which are usual and customary to the supervising physician's practice in a practice setting. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 63 for background information on this regulation change.)

On September 15, OAL approved the Committee's amendment of section 1399.508, which now requires PA applicants who have been granted interim approval by PAEC to complete the licensure process by paying the initial licensing fee within ninety days of notification that they have passed the exam required in section 1399.507. If an applicant fails to complete the licensure process within ninety days following notice, the interim approval will automatically terminate. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 63 for background information.)

LEGISLATION:

AB 1529 (Lancaster), the Department of Consumer Affairs' omnibus bill, was

signed by the Governor on September 29 (Chapter 1104, Statutes of 1989). Among other things, the bill changes PAEC's name to the "Physician Assistant Examining Committee"; changes the name of the license issued by PAEC to a "physician assistant" license; and makes related changes.

The following is a status update of bills described in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 60:

AB 1912 (N. Waters), as amended August 28, authorizes PAs to perform physical examinations required by the Department of Motor Vehicles. Additionally, this bill permits the medical, health, and time of death sections on a death certificate to be completed and attested to by a PA under the supervision of the physician last in attendance, in the case of a patient in a skilled nursing or immediate care facility at the time of death. This bill was signed by the Governor on September 24 (Chapter 760, Statutes of 1989).

AB 459 (Frizzelle), which would provide that a previously licensed individual may renew his/her license at any time after license expiration upon payment of the applicable fees, and upon satisfaction of continuing education requirements, is a two-year bill pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

RECENT MEETINGS:

At its June 23 meeting, PAEC discussed the impact of BMQA's implementation of "CAS Phase II" on PAEC. "CAS Phase II" is the second part of a computerized system that will assist in enforcement case tracking and application processing. The system is being developed by the Department of Consumer Affairs, and BMQA hopes to have it up and running by November 1989. Due to the implementation of "CAS Phase II," PAEC's staff will be reduced by seven-tenths of an employee position. Mr. Dale expressed concern that this loss to PAEC is excessive and would cripple the Committee's ability to operate effectively.

Also in June, PAEC approved a budget change proposal which seeks to transfer responsibility for performing some specific shared services duties back to PAEC from BMQA. This transfer would also result in the concurrent transfer of associated employee hours to PAEC.

At its September meeting, the Committee discussed the possibility of proposing legislation to allow PAEC to test the continuing competency of PAs. Under current law, PAEC may suspend licenses,

issue a public reprimand, and revoke licenses, but it is not authorized to test a licensed PA to ensure he/she is still competent to practice. The Committee considered this as an alternative to instituting a continuing education requirement which would require PAs to have a specific number of hours of authorized coursework each year.

Finally, the licensing statistics for the period of July 1, 1988 to April 30, 1989 were announced. During that time, 209 licenses were issued to PAs, for a total of 1,782 currently-licensed PAs.

FUTURE MEETINGS:

January 12-13 in Santa Barbara.

March 2 in San Francisco.

May 4 in Palm Springs.

July 27 in San Jose.

BOARD OF PODIATRIC MEDICINE

Executive Officer: Carol Sigmann
(916) 920-6347

The Board of Podiatric Medicine (BPM) of the Board of Medical Quality Assurance (BMQA) regulates the practice of podiatric medicine in California. The Board licenses doctors of podiatric medicine (DPMs), administers examinations, approves colleges of podiatric medicine (including resident and preceptor training), and enforces professional standards by disciplining its licensees. BPM is also authorized to inspect hospital records pertaining to the practice of podiatric medicine.

The Board consists of four licensed podiatrists and two public members.

MAJOR PROJECTS:

Enforcement Program Policies. At its September 22 meeting, the Board adopted amendments to several standing policies regarding its enforcement program. First, the Board modified the job description of BPM's Chief Podiatric Medical Consultant (CPMC) to require that individual to design and implement an annual performance evaluation process for expert witnesses used in BPM's enforcement program; the CPMC is also primarily responsible for the recruitment and training of expert witnesses. The CPMC must supervise Associate Podiatric Medical Consultants (APMCs) in their review and evaluation of consumer complaints; and must draft a procedure manual for the Podiatric Medical Consultants Unit in accordance with BPM policy and in a format recommended by



the Board.

BPM also revised the APMC job description, to require those individuals to assume geographic responsibility for BPM's enforcement program and probation surveillance primarily in the region wherein he/she resides or practices. The APMC must assist the CPMC and BPM's Executive Officer (EO) in designing terms and conditions of probation which safeguard California citizens and rehabilitate the disciplined podiatrist. The APMC is also chiefly responsible for assuring the assignment of expert witnesses to afford the accused podiatrist due process, and for ensuring those assignments meet the criteria defined in the BPM Conflict of Interest Statement.

The Board also modified its "Procedure and Protocol for Monitor's Review of Probationer's Practice." This statement describes BPM's probation program, and the responsibilities of the probationer and his/her monitor. The procedure statement was modified to describe monitor duties where the monitor is serving as a post-surgical reviewer of the probationer's performance.

The Board also adopted a policy wherein its Podiatric Medical Consultants (PMC) will be evaluated on an annual basis by the Board's Professional Practice Committee and the EO. Finally, BPM adopted a modification to its PMC Conflict of Interest Agreement, which requires PMC applicants to certify that they have not been convicted of a felony in the past eight years, nor are they currently the subject of a felony allegation.

Enhanced Physician Discipline Bill. BPM continues to take an active role in monitoring and suggesting amendments to SB 1434 (Presley), the omnibus bill which would enhance the detection ability and authority of the physician discipline system applicable to licensees of BMQA and BPM. (See CRLR Vol. 9, No. 3 (Summer 1989) pp. 57 and 61 for background information on SB 1434.)

Robert C. Fellmeth, Director of the Center for Public Interest Law which is sponsoring SB 1434, reported on the progress of the bill at the Board's June 9 meeting in San Diego. Fellmeth later suggested amendments to the bill in response to the Board's concerns regarding selection of experts, composition of the Medical Quality Panel (which would be created by the bill to hear all medical discipline cases), and the appeals process.

SB 1434 is currently pending in the Senate Appropriations Committee as a two-year measure.

LEGISLATION:

The following is a status update of bills described in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 61:

AB 402 (Roybal-Allard) exempts from California licensing provisions all out-of-state physicians and health care practitioners who provide health care for which they are licensed during an officially declared state emergency. This bill was signed by the Governor on July 7 (Chapter 97, Statutes of 1989).

AB 675 (Speier), which would have added as grounds for disciplinary action against physicians the charging of excessive fees for professional services, was vetoed by the Governor on September 25. In his written statement, the Governor reasoned that there is no need to involve BMQA in resolving disputes between physicians and patients concerning excessive fee charges. He is also concerned that the bill would establish precedent for involving other state regulatory and licensing agencies in similar disputes, thus resulting in major workload increases which would detract from the regulatory and licensing functions.

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: **AB 459 (Frizzelle)**, which would enable licensees who have let their licenses lapse for more than five years to renew their licenses without reexamination; **SB 1434 (Presley)**, which would create a Medical Quality Panel of specialized administrative law judges within the Office of Administrative Hearings, and significantly enhance the ability of BMQA/BPM to detect incompetent or impaired physicians/podiatrists; **SB 1162 (Stirling)**, regarding the use by a physician of conscious sedation, regional anesthesia, or general anesthesia outside the auspices of a peer review body; and **AB 2459 (Klehs)**, which would provide that a certificate to practice podiatric medicine would authorize a podiatrist to use the title "podiatric physician and surgeon."

RECENT MEETINGS:

At the Board's June meeting, Rodney Chan, DPM, was elected BPM president and Jean Duffy, RN, was elected vice-president.

The examination statistics from the May 1989 licensing exam were presented. Of the 82 candidates for licensure, 78% passed. This pass/fail ratio for the May exam is consistent with historical ratio percentages.

At its September meeting, the Board adopted a policy decision regarding the licensing examination. Candidates will

now be informed that, upon entering the examination room, the candidate has the right to leave the examination room and request a different team of commissioners if the candidate recognizes or feels uncomfortable with either of the examination commissioners assigned. Furthermore, should the candidate find it necessary to appeal a failing score, the appeal may not be based on a conflict with the examination commissioners, if the candidate did not exercise this known right prior to starting the examination.

FUTURE MEETINGS:

December 8 in Los Angeles.

March 9 in San Diego.

PSYCHOLOGY EXAMINING COMMITTEE

Executive Officer: Thomas O'Connor (916) 920-6383

The Psychology Examining Committee (PEC) is the state licensing agency for psychologists. PEC sets standards for education and experience required for licensing, administers licensing examinations, promulgates rules of professional conduct, regulates the use of psychological assistants, conducts disciplinary hearings, and suspends and revokes licenses. PEC is composed of eight members, three of whom are public members.

MAJOR PROJECTS:

Proposed Fee Increases. On June 26, PEC submitted to the Office of Administrative Law (OAL) its proposed regulatory changes which would increase the psychologist examination fee from \$100 to \$150, and establish the inactive renewal fee for psychologists at \$40. This action amends subsection (b) and adds subsection (d) of section 1392, Chapter 13.1, Title 16 of the California Code of Regulations (CCR). (See CRLR Vol. 9, No. 3 (Summer 1989) pp. 61-62 and Vol. 9, No. 2 (Spring 1989) p. 67 for background information.) On July 10, OAL notified the Committee that it approved the amendment of subsection (b), but disapproved new subsection (d) regarding inactive renewal fees because the rulemaking file failed to comply with the necessity standard in Government Code section 11349.1. PEC's supporting materials assumed 311 inactive renewals per year (\$12,440 annually), but contained no information on the cost of operating the Committee's programs rela-



REGULATORY AGENCY ACTION

tive to inactive licensees. At this writing, PEC is in the process of supplementing its rulemaking file on this issue for re-submission to OAL.

Alcohol/Chemical Dependency Training Regulations Approved. On June 22, OAL approved PEC's adoption of section 1387.6, Title 16 of the CCR, which requires psychologists to receive training in alcohol and chemical dependency detection and treatment. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 67 and Vol. 9, No. 1 (Winter 1989) p. 57 for background information.)

Regulatory Changes. At its September 16 meeting, PEC held a public hearing on several other proposed changes to its regulations. Existing sections 1383 and 1386 contain obsolete references to programs "approved" by the American Psychological Association; PEC proposes to amend those sections to reference programs "accredited" by the American Psychological Association. The proposal would also add sections 1398, 1398.1, and 1398.2, to implement AB 4016 (Chapter 800, Statutes of 1988), which requires any psychologist desiring to practice under a fictitious name to obtain a permit from PEC. These sections would specify the application procedure for a fictitious name permit, and establish standards for the approval and issuance of permits and allowable names.

Following the September 16 hearing, PEC approved the technical changes to sections 1383 and 1386; but slightly modified the language of the fictitious name regulations, and released the modified language for another public comment period ending on October 20.

LEGISLATION:

The following is a status update of bills reported in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 62:

AB 858 (Margolin), as amended August 24, changes PEC's name to the Board of Psychology. This bill was signed by the Governor on September 26 (Chapter 888, Statutes of 1989).

SB 1480 (Keene), as amended August 28, amends section 800 of the Business and Professions Code to enable PEC licensees who are the subject of disciplinary complaints to obtain access to the substance of the complaint, but not the identity of the complainant. This bill was signed by the Governor on September 11 (Chapter 354, Statutes of 1989).

AB 1444 (Margolin), as amended June 26, provides that clinical psychologists are not liable in any action arising out of a refusal to render emergency services and care if the refusal is based

on a determination that an emergency medical condition does not exist or that the health facility does not have the appropriate facilities or qualified personnel to render services. This bill was signed by the Governor on September 8 (Chapter 333, Statutes of 1989).

AB 889 (Tucker), as amended August 24, adds "psychological consultant" to the list of titles which may not be used by an individual unless he/she is a licensed psychologist. This bill was signed by the Governor on September 26 (Chapter 887, Statutes of 1989).

AB 1729 (Chandler), as amended August 22, makes subverting or attempting to subvert any licensing examination a misdemeanor. This bill was signed by the Governor on September 29 (Chapter 1022, Statutes of 1989).

SB 190 (Morgan), as amended September 12, establishes the Council for Private Postsecondary and Vocational Education, comprised of fifteen members appointed in a prescribed manner and three ex officio members; and, commencing January 1, 1991, requires the Council to be responsible for the approval of private postsecondary and vocational educational institutions. The bill prohibits institutions from issuing academic or honorary degrees or from offering courses of education leading to educational, professional, technological, or vocational objectives, unless they have demonstrated compliance with prescribed minimum standards and have been approved by the Council. The Council is authorized to receive and investigate complaints alleging violations of the bill's provisions and it is authorized, at the conclusion of a hearing, to report its findings to the Attorney General, or to commence an action to revoke an institution's approval to operate. This bill was signed by the Governor on October 1 (Chapter 1307, Statutes of 1989).

SB 1004 (Boatwright), as amended July 5, makes it a misdemeanor or felony offense for any psychotherapist, or any person holding him/herself out as a psychotherapist, to engage in sexual relations with a current patient or client, or with a former patient or client, when the relationship was terminated primarily for the purpose of engaging in these relations, unless the psychotherapist has referred the patient or client to an independent psychotherapist. This bill was signed by the Governor on September 25 (Chapter 795, Statutes of 1989).

The following bills were made two-year bills, and they may be pursued when the legislature reconvenes in January: **AB 459 (Frizzelle)**, which would

enable licensees of agencies within the Department of Consumer Affairs to renew their expired licenses at any time without reexamination; **SB 194 (Morgan)**, which would require the California Postsecondary Education Commission to recommend criteria and standards to be used in periodic review of associations that accredit educational institutions; **AB 1016 (Moore)**, which would provide that Medi-Cal outpatient psychology services may be provided by a psychologist or by any provider trained to provide the services, such as a psychological intern, while under the supervision of a physician; **AB 1266 (Tucker)**, which would enact the Alcohol and Drug Counselors License Law, and would require those wishing to become licensed to complete 315 hours or 21 semester academic units of approved alcohol and drug education training; and **AB 2422 (Polanco)**, which would assess a 10% surcharge on the licensing fees of a number of health professions, including psychologists.

LITIGATION:

At its June 9 meeting, PEC went into closed session to discuss the proposed settlement of a pending administrative complaint entitled *Department of Fair Employment and Housing v. PEC*. Numerous complainants charged that the Examination for the Professional Practice of Psychology (EPPP), prepared by the Professional Examination Service (PES) and administered by PEC in California, has had an adverse impact on blacks and examinees over the age of forty.

Upon investigation, the Department found that analyses of the April 1985, October 1985, April 1986, April 1987, and October 1987 exam administrations indicated such an adverse impact, and issued several class actions and accusations permitting the complainants to proceed against PEC. Eric Werner, manager of the Central Testing Unit (CTU) of the Department of Consumer Affairs, issued a report in March 1989 stating that he "cannot certify that pass/fail results obtained from the EPPP as administered in California provide a sufficiently valid basis for licensing decisions," and set forth eight recommendations which should be implemented in an effort to validate the EPPP as a licensing tool.

In the settlement signed by PEC officials on June 9, both sides agreed that Werner's eight recommendations should be implemented and that the CTU should monitor each EPPP administration until it certifies that the EPPP is valid and job-related. If CTU is unable to so certify



within three years, the PEC must consider the development and utilization of an alternative written licensing examination.

With respect to complainants (examinees who are black or over the age of forty) who have already taken the EPPP, PEC agreed that: (1) any class member who achieved a score on an EPPP which is within two-thirds standard deviation of the national mean for all doctoral candidates on the specified test administrations shall be deemed to have achieved a passing score in California, and shall be eligible to take an oral examination; (2) in the event that any class member previously passed an oral examination administered by PEC, and has otherwise satisfied all other qualifications established by PEC, the class member shall be issued a license to practice psychology without undue delay. PEC agreed to similar licensing conditions for class members who took the EPPP from April 1988 until such time as the CTU certifies the exam as valid and job-related.

RECENT MEETINGS:

At its September 16 meeting in San Diego, PEC discussed draft language of amendments to regulatory sections 1387, 1387.5, 1389, and 1391.6, Title 16 of the CCR. Through these amendments, the Committee hopes to define the term "qualified primary supervisor"; set the standards for qualification as a supervisor; define acceptable group supervision; and prescribe the responsibilities of supervisors. PEC hopes to formally notice these proposed regulatory changes in early 1990.

PEC also reviewed a draft revision of its disciplinary guidelines, including standard conditions to be included in all cases of probation, optional conditions to be included as appropriate, and examples of specific violations. The Committee planned to adopt the guidelines at its November meeting.

FUTURE MEETINGS:

February 2-3 in San Francisco (tentative).

March 16-17 in San Diego.

May 11-12 in Los Angeles.

July 27-28 in San Francisco.

SPEECH PATHOLOGY AND AUDIOLOGY EXAMINING COMMITTEE

Executive Officer: Carol Richards
(916) 920-6388

The Board of Medical Quality Assurance's Speech Pathology and Audiology Examining Committee (SPAEC) consists of nine members: three speech pathologists, three audiologists and three public members (one of whom is a physician).

The Committee registers speech pathology and audiology aides and examines applicants for licensure. The Committee hears all matters assigned to it by the Board, including, but not limited to, any contested case or any petition for reinstatement, restoration, or modification of probation. Decisions of the Committee are forwarded to the Board for final adoption.

MAJOR PROJECTS:

Anticipated Legislation. At its September meeting, SPAEC discussed its plans to introduce legislation in the 1990 session in several areas, including a proposal to require continuing education for speech pathologists and audiologists. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 58 for background information.) Other targeted areas may include amendments to SPAEC's practice act; changing its name from "Committee" to "Board"; cosponsoring legislation with the California Speech-Language-Hearing Association (CSHA) to allow speech pathologists to give hearing tests; and possibly increasing the number of supervised hours a student is required to complete before licensing.

The entire topic was assigned to SPAEC's Legislative Subcommittee, with direction from Department of Consumer Affairs legal counsel Greg Gorges, to separate controversial issues from non-controversial issues in drafting the bill. The Subcommittee was instructed to study areas of proposed legislation and report back at SPAEC's November meeting.

Speech Pathology and Audiology Aide Regulations Approved. On July 19, the Office of Administrative Law approved SPAEC's modified version of regulatory sections 1399.170-.176, Chapter 13.4, Title 16 of the California Code of Regulations, which will impose stricter requirements regarding registration, supervision, and training programs for speech pathology and audiology aides. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 63; Vol. 9, No. 2 (Spring 1989) p. 68; and Vol. 9, No. 1 (Winter 1989) p. 58 for background information on these changes.)

Plans to Expand Communication.

SPAEC is determined to expand communication within the industry and to the general public. SPAEC is looking into developing pamphlets that will generate internships, pamphlets in foreign languages (mainly Spanish) and a question-and-answer packet for aides.

LEGISLATION:

SB 1324 (Rosenthal) was signed by the Governor on September 16 (Chapter 302, Statutes of 1989). This bill authorizes the issuance of a temporary license to a hearing aid dispenser applicant licensed in another state who has been engaged in the fitting and sale of hearing aids for two years prior to application, provided that out-of-state license has not been subject to formal disciplinary action by another licensing authority.

This bill prohibits temporary licensees from being the sole proprietor, manager, or independent operator of a hearing aid business or from advertising or representing themselves as licensed hearing aid dispensers. The temporary license is issued for six months and may be renewed, but the temporary licensee is required to take the license examination within ten months after the temporary license is issued. Failure to take the examination will result in expiration of the temporary license.

AB 459 (Frizzelle), which would provide that a previously licensed individual may renew his/her license at any time after license expiration upon payment of the applicable fee and satisfaction of continuing education requirements, is a two-year bill pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

RECENT MEETINGS:

At the September 8 meeting, SPAEC chair Gail Hubbard presented a list of Committee goals and objectives—the most important of which is the sponsorship of legislation in the new session. The Committee also discussed expanding communication, changing the license renewal fee date, and improving office procedure. The goals and objectives were accepted unanimously by the Committee.

At the same meeting, SPAEC discussed the need for better logging and tracking of consumer complaints against licensees, even when the complainant refuses to give names or any other necessary information. The Committee will make a concerted effort to encourage complainants to formalize their complaints, and noted that it cannot act on a complaint without complete information.



REGULATORY AGENCY ACTION

The Committee discussed the topic of feeding patients in depth. The issue is whether patients who are in danger of aspiration should be fed only by speech pathologists, or whether feeding by nurse's aides is acceptable. The argument in favor of requiring only speech pathologists to feed patients, or to be in the room during feeding, is that the pathologist can help the patient swallow and teach proper lip, tongue, and jaw control. The problem appears to be determining which patients need this specific supervision and which do not. The discussion was tabled pending further information and clarification.

FUTURE MEETINGS:

January 12 in Costa Mesa.
March 30 in San Diego.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Ray F. Nikkel
(916) 445-8435

The Board of Examiners of Nursing Home Administrators (BENHA) develops, imposes, and enforces standards for individuals desiring to receive and maintain a license as a nursing home administrator. The Board may revoke or suspend a license after an administrative hearing on findings of gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying for a license, treating any mental or physical condition without a license, or violation of any rules adopted by the Board. Board committees include the Administrative, Disciplinary, and Education, Training and Examination Committees.

The Board consists of nine members. Four of the Board members must be actively engaged in the administration of nursing homes at the time of their appointment. Of these, two licensee members must be from proprietary nursing homes; two others must come from non-profit, charitable nursing homes. Five Board members must represent the general public. One of the five public members is required to be actively engaged in the practice of medicine; a second public member must be an educator in health care administration. Seven of the nine members of the Board are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each appoint one member. A member may serve for no more than two consec-

utive terms.

MAJOR PROJECTS:

Implementation of AB 1834. At BENHA's October 3 meeting, Education Committee Chair Dr. John Colen presented a progress report on BENHA's continuing education (CE) and administrator-in-training (AIT) programs. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 64 and Vol. 8, No. 4 (Fall 1988) p. 67 for background information on BENHA's implementation of AB 1834.)

Nursing home administrators (NHAs) are currently required to complete forty hours of CE credits during each two-year license period. Recent changes have increased the filing fees for CE providers to \$150 per provider and \$15 for each course submitted to BENHA for approval. For the CE portion of its AB 1834-required study, the Education Committee sent questionnaires to CE providers and NHAs to assess compliance with the law and determine the availability of courses by subject matter and geographical area. Based on the survey results, the Committee made several recommendations. BENHA should: (1) monitor CE provider applications during the next two years to see if the fee increases are excluding CE providers or reducing course offerings; (2) continue to approve correspondence CE courses to assure availability to rural areas, and explore the possibility of CE home video courses; and (3) retain the forty-hour CE requirement.

Under current AIT requirements, a preceptor must have served for two years as an NHA, attended a preceptor training session, and have no pending or past disciplinary actions. Based on an assessment of the AIT applicant's background and education, the preceptor must submit a training program to the Board for approval. Most AITs, based on their educational background, are required to complete 1,000 hours of AIT instruction. In studying the AIT program as required by AB 1834, the Committee sent questionnaires to NHAs, as former AIT trainees, to assess the effectiveness of the program. The Committee made several recommendations based on the survey results. BENHA should: (1) monitor the AIT programs more closely to assure that trainees are following the twenty-hour-per-week minimum requirement; (2) adopt regulations requiring onsite visits by a Board or staff member to ensure compliance with AIT requirements; and (3) adopt a regulation requiring a B.A. degree as a minimum prerequisite for the NHA licensing exam.

This last requirement would correspond to the educational standards of the National Association of Boards of Examiners of Nursing Home Administrators (NABENHA).

Board members generally agreed with the Committee's recommendations, particularly the suggestion regarding AIT onsite visits, which are currently conducted by the American College of Health Care Administrators. Some Board members suggested that the monitors lack uniform and, perhaps, adequate qualifications. The current recommendation, if implemented, would vest more monitoring control in the Board. The recommendations were accepted and were sent back to BENHA's committees for implementation recommendations.

LEGISLATION:

The following is an update on bills reported in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 64:

AB 2323 (Hannigan) requires the Department of Social Services to conduct a study to determine the appropriate state administrative structure to certify administrators of residential care facilities for the elderly (RCFEs) and to establish a minimum standard of education and training requirements for RCFE personnel. This bill was signed by the Governor on September 13 (Chapter 434, Statutes of 1989).

SB 1166 (Mello) enacts the Residential Care Facilities for the Elderly Reform Act of 1989, requiring, among other things, that an applicant demonstrate that he/she has successfully completed an approved certification program involving a minimum of forty hours of class instruction. This bill was signed by the Governor on September 29 (Chapter 1115, Statutes of 1989).

AB 1886 (Quackenbush), as amended August 21, would provide that any person who has been directly responsible for planning, coordinating, directing, and implementing the patient care, physical plan, and fiscal administration of a distinct part skilled nursing facility (DP/SNF) of an acute care hospital in California for one year immediately preceding his/her application for a nursing home administrator's license, and who applies on or before July 1, 1990, shall be required to take the next scheduled nursing home examination as a condition of licensure. Additionally, the bill provides that any person who has a master's degree in nursing home administration or a related field, and has specified work experience, shall be eligible to take the examination for a nursing home adminis-